

Court No. - 35

Case :- WRIT - A No. - 14959 of 2023 (Leading)

Petitioner :- C/M Shiv Inter College And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shashi Kant Shukla

Counsel for Respondent :- C.S.C.,Kushmondeya
Shahi,Prabhakar Awasthi,Rajesh Kumar Pathak

Connected with

Case :- WRIT - A No. - 18303 of 2023 (Connected)

Petitioner :- C/M Shiv Inter College, Gajraula Through Its
Manager And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Shashi Kant Shukla

Counsel for Respondent :- C.S.C.,Kushmondeya Shahi

Hon'ble Vikas Budhwar,J.

Two rejoinder affidavits and three affidavits of service in the leading writ petition filed are taken on record.

Heard Sri Shashi Kant Shukla, learned counsel for the writ petitioners in the leading writ petition and the connected writ petition, Sri P.K. Shahi, learned Additional Chief Standing Counsel, who appears for the respondents no. 1 and 3 in the leading writ petition and the respondents no. 1, 2 & 4 in the connected writ petition, Sri Tanuj Shahi holding brief of Sri Kushmondeya Shahi, learned counsel for the respondents no. 2 in the leading and respondent no. 3 in the connected writ petition and Sri Rajesh Kumar Pathak, who appears for the respondent no. in the leading and respondent no.5 in the connected writ petition.

Sri Shashi Kant Shukla, learned counsel for the writ petitioners in both the writ petitions submits that pursuant to the advertisement No.1 of 2002 a recommendation (Adhiyachan) was sent to the District Inspector of Schools, District Amroha of two senior most Lecturers being Sri Mahi Pratap Singh and Sri Alok Singh for recruitment on the post of Principal, interview were conducted and the results were declared on 28.11.2008 whereby Sri Mahi Pratap Singh who placed at serial no.1 being senior most Lecturer and Sri Sudan Singh at serial no.2,

however, Sri Mahi Pratap Singh failed to join the institution in question and he subsequently died on 30.6.2006 even prior to the declaration of the result dated 25.11.2008 and so far as Sri Sudan Singh is concerned he took charge the charge of the Principal of the institution in question and superannuated on 31.3.2000.

He further submits that Dr. Shalabh Bharadwaj, who claims to have applied for the post of Principal in pursuance of the aforesaid advertisement preferred Writ Petition (A) No.6271 (S/S) of 2010, Dr. Shalabh Bharadwaj vs. State of U.P. before the Lucknow Bench of this Court questioning the non consideration of his candidature for the post of Lecturer in which on 6.9.2010 an interim order was passed whereby the result of Dr. Shalabh Bharadwaj was directed to be declared and natural consequences to be followed. Pursuant to the same the result was declared on 29.9.2010 wherein his name was placed at serial no.1 in the institution being Jawahar Lal Nehru Memorial Nagar Palika Inter College Sirsa, Moradabad and the name of one Sri Ravindra Kumar Sharma was placed at serial no.2. Sri Ravindra Kumar Sharma, challenged the order of the Writ Court in Special Appeal No.753 of 2010, Ravindra Kumar Sharma vs. State of U.P. which came to be allowed on 12.10.2010. Thereafter the writ petition preferred by Dr. Shalabh Bharadwaj, Writ-A No.6271 of 2010 came to be allowed on 10.4.2023 wherein in para 12 to 17 the following order was passed:-

"12. Both the writ petitions are disposed of with a direction to opposite parties No.s 3 and 4 to immediately declare the result of the petitioner in connection with the advertisement as contained in annexure no. 1 to the writ petition and they shall further ensure that natural consequences are followed.

13. As this Court in writ petition No.6271 (S/S) of 2010 has already directed the respondents to declare the result the fate of the petitioner and other persons shall follow the result so declared by the respondent.s

14. This Court has further been informed that during pendency of the writ petition Sri Mahendra Pratap Singh, who was shown at serial No.1 vide order dated 10.11.2008 has died on 30.6.2006. Sri Pankaj Shukla, who was appearing on behalf of Sri Sudan Singh has informed that at the time of filing of the writ petition Sri Sudan was aged about 54 years' and he would have superannuated and would have no interest in the present dispute.

15. In case declaration of result affects seniority of any other person, it shall always be open for him to challenge the same by the respective persons.

16. The aforesaid exercise be conducted expeditiously but not later than four weeks from the date of production of a certified copy of this order before the authority concerned.

17. In light of the above, both the writ petitions stand disposed off."

Post allowing of the said writ petition now the Secretary, U.P. Secondary Education Services Selection Board, Allenganj, Allahabad has passed an order dated 7.8.2023 while according posting to Dr. Shalabh Bharadwaj in the petitioners' institution as according to the order in question in pursuance of the advertisement no. 1 of 2002 the petitioners' institution was enlisted as serial no.5 and since only one vacancy is lying vacant so accommodation is to be granted to Dr. Shalabh Bharadwaj.

Questioning the order dated 7.8.2023 passed by the Secretary, U.P. Secondary Education Services Selection Board, Allenganj, Allahabad the writ petitioners have filed the present writ petition. Since now pressure has been exerted upon the writ petitioners for according joining and show cause notice has been issued on 12.10.2023 by the District Inspector of Schools, District Amroha thus the connected writ petition has been filed.

Learned counsel for the petitioners submits that the placement made of Dr. Shalabh Bharadwaj the writ petition is per se illegal.

Sri Tanuj Shahi holding brief of Sri Kushmondeya Shahi submits that the entire exercise has been under taken pursuant to the directions contained in the order dated 10.4.2023 passed in Writ-A No.6371 of 2010 and Writ-A No.1851(S/S) of 2011 by the Lucknow Bench of this Court. He submits that in para 14 of the said order this Court had taken notice of the fact that in the petitioners' institution Sri Mahi Pratap Singh who was shown to be to be at serial no.1 had died on 30.6.2006 and Sri Sudan Singh was 54 years when the writ petition was filed he might have no interest and he would have retired. He further submits that the proper course open for the writ petitioners is to challenge the order of the learned Single Judge while filing an intra court appeal or take appropriate proceedings for recalling of the order or as the case may be.

Confronted with the said situation Sri Shashi Kant Shukla submits the present writ petition be allowed to be withdrawn with liberty to the writ petitioners to file an intra court appeal before the Special Appellate Bench questioning the order of the learned Single Judge dated 10.4.2023 passed in Writ-A No.6271 of 2010 and Writ-A No.1851(S/S) of 2011 or to file a recall application as the case may be.

In view of the said statement the writ petition is permitted to be withdrawn with the aforesaid liberty. It is always open for the writ petitioners to take the defence available under Section 14 of the Limitation Act, 1963 and the law available claiming that

the writ petitioners were pursuing the remedy bonafidely before wrong forum.

With the aforesaid observations, both the writ petitions are **consigned to record.**

Order Date :- 23.11.2023

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